An Insanity Plea Liable to Stop Pro-ceedings Today.

It was learned yesterday that the at-torneys for the defense intended today to file an affidavit setting forth that Burt to file an affidavit setting forth that Burt has become insane since the trial. This affidavit will be filed in the court here, and inasmuch as the Twenty-sixth district court, in which it will have to be filed, is not in sessioan here now, the matter will in all probability have to go over until the court reconvenes in this city in March. In case such proceedings are instituted today there will be no hanging temorrow, as the stay of execution will be effective until the new proceedings set up by the defendant's attorneys are set aside or disposed of in some way.

# THE COMMUTATION MATTER.

The Full Text of the Pardon Board' and the Governor's Reports. and the Governor's Reports.

Governor Culberson yesterday settled he Burt case, so far as he is concernd, by refusing to interfere by the comuting of Burt's sentence to life imprisment in the state penitentiary. The assons for his action are given below in I, as is also the divided report of the don board. As can be noticed, Dr.

1 son favors commutation while adge Dunham opnoses it. The gova favors commutation while Dunham opposes it. The gov-reasons for declining to interfere or's reasons for declining to interfere also given, and the reader can also given, and the reader can see the facts in the case in a nutl. Considerable and thorough attentions was given this case, not alone by pardon board, but by the governor, the result is abided by by the pubwith the full feeling that every matof evidence has been carefully thed. The full text of the report e pardon board, as well as the govon the case, as given the press on the case, as given the press

# DR. DENSON'S REPORT.

ommends That the Sentence Be Commuted.

urt, Travis County-Murdey-leation for Commutationunder sentence of death.

ADDITION OF THE PROPERTY OF TH

ies; the water in the cistern was in daily use by the household theretofore. He took the handle off the cistern pump and secreted it. By some means or care used not a stain of blood had been left on the not a stain of blood had been left on the floors, on the walls or furniture in the room where the killing was done, nor on the way from that room, inside or outside of the house, on the way to the cistern. The servant returned at about 11 o'clock, and slept in the house, but heard no noise, except a faint dreamlike remembrance of heuring a child cry. The next noise, except a faint dreaming remembrance of hearing a child cry. The next morning at about 7 o'clock he tapped at the servant's door, awakened her, requested her to rise and go to market, a thing she was not in the habit of doing.

quested her to rise and go to market, a thing she was not in the habit of doing. He was not seen again until the servant returned from market. On her return she took the teakettle, proposing to fill it with water, and in taking hold of it made quite a noise, when defendant said to her: "Don't use water from the eistern, as a cit fell in there last night." Some question about the wife and children arose, when he said that he had had some troutle in the night, and had sent them to tan Antonio on the 5 o'clock a. m. train, but that they would be back on Tuesday or Wednesday, when everything would be ready to go to housekeeping at the Seott place. His breakfast being prepared, defendant gave a note to the servant to be carried to a cartman, directing him to go to the store of defendants' brothers and procure and bring to the house some boxes. He also gave her money to buy some nails and bring to him, all of which was done as directed, and the cartman was requested to return at 3 or 4 o'clock. He ste his breakfast. After all of which was done as directed, and the cartman was requested to return at 3 or 4 o'clock. He ate his breakfast. After breakfast he sent the servant with a note to a second-hand furniture man to come and look at the furniture and other household effects. He came and looked at the effects and asked they price wanted, and was told \$150, but finally agreed to take \$65, and the trade was consummated at those figures, and the goods delivered. During the day the bloody clothing, sheets, bolsters and pillows, and other blankets, comforts—all more or less bloody—a bloody hatchet, the hats and bonnets of the wife, and miscellaneous clothing of the children (not bloody) bloody laneous clothing of the children (not bloody), bloody cotton from a mattress, portions of the ticking from a mattress, also bloody, were all packed in the pack-ing boxes and nailed up, and at 4 o'clock

fendant in early childhood was a thief and very cruel, but as he grew up he was reasonably cheerful in his disposi-tion for some years, and then begun to be more or less reserved and quiet until the death of his father; after the death of his father he became more and more reserved. morose and secretive, and finally, without cause, became estranged from his brothers, but he finally married and had two little girls and between him and his wife and children there was great love, devotion and affection, though as to his brothers and other friends he had,

his brothers and other friends he had, without cause, become estranged and locked on them as enemies. After he married he developed into a great liar, thief, swindler, embezzler and forger, and inally, motiveless, without cause or reason, this man, on the night of July 24, 1896, killed his wife and two little girls by blows on the right side of each of their heads and by tying tightly around the throats of each of them a handkerchief and then enveloped the wife's body in a blanket, except her feet, and wound around her a rope to hold the blanket, and tied the hands and feet of his children with wire and strings and wrapped one of the children up in a gown and threw all three of their bodies in an underground cistern. Was such a man, coming from such an ancestry and doing as stated to you, sane or insane at the time he killed his wife and children?" "In answer to that question I would say that the defendant was insane." Dr. R. time he killed his wife and children?"
"In answer to that question I would say that the defendant was insane." Dr. B. M. Worsham testified: "I am superintendant of the State Lunate Asylum at Austin. I have held this position for four months this last time, and before that I was for eighteen months superintendent of the State Lunatic Asylum at San Antonio, and before that was for four years assistant superintendent at the Austin Asylum \* \* I think I have seen him (applicant) often enough that I was for eighteen months superintendent of the State Lunatic Asylum at San Antonio, and before that was for four years assistant superintendent at the Austin Asylum \* \* I think I have seen him (applicant) often enough and have studied the case sufficiently to enable me to have an opinion as to the defendant's sanity. I think he is in his normal condition. He is, in relation to himself, of faulty heredity, and yet up to this time he has been considered a sane man. I think him as sane as he ever was, or, in other words, he is in his normal condition. I have heard all

from all the evidence that at the time of doing the act the defendant was not of sound mind," etc., nor, perhaps, was the "weight or preponderance of evidence" in favor of his insanity. The verdict of guilty was inevitable—the facts justify and warrant it. Petitions for the commutation of applicant's sentence to life imprisonment are signed by a few prominent citizens of Austin and Houston. Several prominent physicians of Austin say: "We are more or less familiar with the circumstances connected prominent citizens of Austin and Houston. Several prominent physicians of Austin say: "We are more or less familiar with the circumstances connected with the case, and while we are not prepared to say that we are satisfied that he was positively insane at the time of the deed circumstances and the opinions of a number of witnesses throw a very strong doubt at least of his sanity, and in view of that doubt we feel that he is not a proper subject for the death penalty. We, therefore, humbly petition your excellency to commute the sentence to life imprisonment, in the name of humanity." Dr. B. M. Worsham says, in a letter dated January 7, 1808: "I was requested to sign a petition asking for the commutation of the death sentence to that of life imprisonment in the case of Eugene Burt, on the ground of total insanity. This I refused to do, but in justice to humanity I beg to submit the following statement and my opinion as to the mental condition of the condemned man: I examined Mr. Burt before and after his trial, and heard all of the testimony, both lay and expert. The concensus of opinion of all competent to give an opinion in such cases was that Mr. Burt had been morally delinquent from early childhood, and was entitled to be classed as a degenerate or pervert. This class is now recognized by all medical men who have given the subject special study, and their responsibility is questioned by all. While I do not consider Mr. Burt ins ne in the common acceptation of the ter n, still, I consider him a sad victim

the mother of the witness, has suffered all her life with hysteria in a violent form; that a cousin of the prisoner's mother, the brother of the witness, has epilepsy in a mild form; that this brother lived in east Texas, was about 47 years old, is married and has children. The witness could not recall his postoffice and had not seen him since 1876. The witness saw him in Georgia in 1859-60 and 61; saw him have epileptic attacks, in which he would stagger, fall and foam at the mouth. The witness testified on cross-examination that his nephew, Clifton Talley, lives at Barrlett, in Texas, is a single man, 32 years old, and a slight epileptic, The witness saw this nephew have an attack of epilepsy about twenty years ago; he was plowing and whipping his horses, and when his father threatened to whip him, looked silly. This is the evidence upon which the witness based his statement that the nephew was an epileptic. The witness disclaimed personal knowledge of all but three of the persons about whom he testified, and related instances about the others from family history, mostly from the prisoner's father and brothers. The evidence on the trial does not show when the grandfather died, nor when he became insame, nor his age.

the trial does not show when the grandfather died, nor when he became insane, nor his age.

Second—The prisoner is thout 28 years
old. According to the testimony of Dr.
Smoot, the prisoner at the age of 7 stole
a purse with money in it and offered
to sell it for 25 cents. The witness
bought the purse and went in the back
yard and took from under a rock a few
dollars in silver, put them in the purse
and delivered it to the witness. Being
questioned, he stated that he put the
money under the rock so that it would
rot and grow to gold. During the same
year the prisoner killed a rabbit belonging to his brother, by driving a nail
through its body. He confessed that he
had done it, and being asked why, stated
that his father was a doctor and he
wanted to be one, so he thought he
would cut the rabbit up to see what it
would do and how it was made. At the
age of 15 he asked the witness if he
knew that the Catholics were going to
take this country and put all the Protestants to death? He warned the witness
to take flight or turn Catholic. He
cursed and abused the witness for doubt. tants to death? He warned the witness to take flight or turn Catholic. He cursed and abused the witness for doubting his veracity. Two years later he presented to the witness some papers relating to the removal of his disabilities as a minor, purporting to be signed by his brothers. The witness afterwards ascertained that the names were forgeries. The witness, Roscoe Burt, a brother of the prisoner, testified that he had business relations with him for tweive years. They coe Burt, a brother of the prison-er, testified that he had business re-lations with him for tweive years. They

father died, nor when he became in-

Sixth—Dr. D. R. Wallace, 71 years old, a physician for forty-five years, for ten years engaged in management of state institutions for the insane, and since 1891 making a specialty of nervous diseases and insanity, was called by the defense. He testified that he had examined the prisoner; had seen him during the progress of the trial; had heard the testimony of Smoot and Talley, and that his opinion was that the prisoner was not insane in the ordinary acceptation of that term; but that he was of unsound mind, in that the considerations of right and wrong did not have the same force with him as they had upon a normal mind. He regarded the prisoner "a degenerate or a moral pervert," one who is not actuated by such motives as control ordinary mortals. This opinion was based upon the family history as related by Talley, incidents in the life of the prisoner, his many crimes, and the killing of his wife and children. Such an act as the brutal killing of wife and children, with or without reason, cause or motive, would be in harmony with a moral pervert, and if he had a motive it would be with reason, and if he did it with a motive he had the will power to resist doing it. A moral pervert has not the normal amount of moral sensibilities that other people possess. "The defendant during the trial is simulating—not acting natural—acting, or trying to act, a part—trying to simulate insanity." is the supposition of the witness. The crime was evidently committed deliberately and after contemplation. It was not the result of a sudden outburst. The prisoner is as sensible at one time as another. He has no fits. "In my opinion," continued the witness. "Eugene Burt, on the night of the hondiede, understood the nature and character of the act after he had determined to commit it." Dr. Worsham, for more than five years in charge of state asylums for the insane, was called by the state, and testified that he had examined the prisoner, had carefully observed his demeanor in the court room, had heard all the testimony, and in his o